



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT R. WILLIAMS)

For Appellant: Robert R. Williams,
in pro. per.

For Respondent: **Carl G. Knopke**
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code. from the action of the Franchise Tax Board on the protest of Robert R. Williams against a proposed assessment of personal income tax in the amount of **\$1,157.43** for the year 1977.

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The issue presented is whether appellant was a California resident for income tax purposes during 1977.

Prior to 1977, appellant was employed as a Field Service Representative by the Allied Technology Company (hereinafter "Allied") of Sunnyvale, California. On August 27, 1976, appellant was assigned by Allied to a field contract with the United States Air Force at the Shahrokhi Air Base in Iran. The contract to which he was assigned had six months more to run, but appellant made Allied a verbal commitment to remain in Iran for one year or through the completion of the master contract, whichever came first. An Allied spokesman indicated that all Field Service Representatives are deployed from Sunnyvale with the intent that they return to California upon the completion of **their** assignment. Upon their return, they are reassigned to the next available duty. Before reassignment, Field Service Representatives perform duties at the Sunnyvale plant and are maintained in this status indefinitely.

Upon the completion of his first contract (six months), appellant was assigned the "follow on" contract, staying another year in Iran. Appellant returned to California from the assignment on March 24, 1978. He worked for Allied in California for the rest of 1978 and in Virginia for the first seven months of 1979. Thereafter, he left the employ of Allied and took another job in Sunnyvale.

Although appellant's Iranian duty station was in a remote back country location with limited facilities for education, medical care or housing, appellant was eligible to take his dependents with him. However, his wife and child remained in their Los Gatos home throughout his assignment. Appellant claims that the reason for this was that he and his wife had separated in July of 1976, a month prior to his Iranian assignment. However, no petition for legal separation or dissolution of marriage was filed by either party. Indeed, during his 18 month assignment, appellant met **his wife** in Athens, Greece, allegedly to discuss their marital and family relationship. Upon his return to California, appellant resumed his relationship with his wife and child.

Apparently, appellant did not file a California personal income tax return for 1977. Respondent requested that appellant file such a return, but

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appellant contended that he was not required to because he was not a resident of California during that period. Nevertheless, respondent issued a proposed assessment. Appellant protested, and respondent's denial of that protest led to this appeal.

Subdivision (a)(2) of Revenue and Taxation Code section 17014 defines the term "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." The parties appear to agree that appellant was domiciled in California throughout the year at issue. The precise question presented, therefore, is whether his absence from this state was for a temporary or transitory purpose.

Respondent's regulations indicate that whether a taxpayer's presence in or absence from California is for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) The regulations go on to provide that, as a general rule:

. . . [I]f an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or to perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this State for other than temporary or transitory purposes....

(Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

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The regulations also reveal that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tkt. 18, reg. 17014-17016(b).) Consistently with this regulation, we have held that the contacts which a taxpayer maintains in this and other states are important, objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases such as the present one, where a California domiciliary leaves the state for business or employment purposes, we have considered it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish significant connections with his new place of abode, or whether he maintained his California connections in readiness for his return. (Compare Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., April 5, 1976, with Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968, and Appeal of William and Mary Louise Oterholtzer, Cal. St. Bd. of Equal., April 5, 1976.)

Some of the connections we have considered to be "relevant are the maintenance of a family home, bank accounts, or business interests; ... the possession of a local driver's license; and ownership of real property." (Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., April 5, 1976; see also, Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

Moreover, we note that it is well settled that respondent's determination of tax is presumed to be correct, and that the taxpayer has the burden of proving it erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; see also, Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Based on the record before us, we must conclude that appellant has not carried his requisite burden. Clearly, appellant did not expect or intend to remain in

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Iran permanently or indefinitely like the taxpayer in the Appeal of Christopher T. and Hoda A. Rand, supra. In Rand, the taxpayer signed an employment contract of indefinite duration. Here, appellant and his employer placed definite limitations on his assignment in Iran. Like the taxpayer in the Appeal of William and Mary Louise Oberholtzer, supra, who we found to be absent from California for a temporary purpose, appellant's assignment was of a limited duration. Allied expected appellant to return to California upon the completion of his assignment, and, in fact, he did so. Moreover, we cannot conclude that appellant severed his contacts with California during his assignment. Furthermore, appellant offers no evidence that he did, in fact, separate from his wife as he alleges. Indeed, he and his wife rendezvoused in Greece during his assignment. We must assume, therefore, that like the taxpayer in the Appeal of David J. and Amanda Broadhurst, supra, appellant could be secure in the knowledge that his family was protected by the laws and government of this state during his absence. Appellant retained ownership of the family home in Los Gatos, where his wife and child continued to reside. Also, appellant has produced no evidence indicating that he terminated his California driver's license or that he withdrew his California bank accounts. Again, appellant has not proved that he severed his connections with California or indicated to what degree he established contacts with Iran.

For the reasons cited above, we conclude that appellant was outside this state for temporary or transitory purposes during his assignment in Iran, and therefore, he remained a resident of California during the year in question. Accordingly, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert R. Williams against a proposed assessment of personal income tax in the amount of \$1,157.43 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett, Chairman

Conway H. Collis - - - , Member

Ernest J. Dronenburg, Jr. - - - , Member

Richard Nevins - - - , Member

Walter Harvey* - - - , Member

*For Kenneth Cory, per Government Code section 7.9